IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.MC.No. 3238 of 2005()

CRRP.22/2004 of ADDL.SESSIONS COURT, KOZHIKODE
CC.602/2000 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY
(CMP 700/04)

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PETITIONER: REVISION PETITIONER/PETITIONER/ACCUSED

DAMODARAN NAIR P.,
S/O.KUNHOMANA NAIR, POOTHOLI HOUSE,
KARUMALA P.O., BALUSSERY.

BY ADV. SRI.K.B.GANGESH
SRI.ANIL GEORGE

RESPONDENTS: RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATER

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1. BABU V.K., S/O.RAGHAVAN,
VADAKKEKUNDATHIL HOUSE, BALUSSERY.

2. STATE, REP. BY GOVERNMENT PLEADER
AND PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/03/2007, ALONG WITH CRMC NO. 3240 OF 2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.3238 and 3240 of 2005

Dated this the 8th day of March, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The prosecution was initiated as early as in 2000. Complainant was examined. The complainant's evidence was closed. The petitioner/accused examined two witnesses of his own. Thereafter, the accused filed two applications. In such applications, he made the request that he may be permitted to produce an audio cassette. He further prayed in that application that he may be permitted to examine his son as a further witness on the defence side.

2. In the second application, he prayed that he may be permitted to recall PW1. The purpose of this endeavour was to confront PW1 with the audio cassette and also to produce such audio cassette.

3. The learned Magistrate by the impugned orders rejected the prayers. Revision petitions were entertained by the learned Sessions Judge against the said orders, which do appear to me to be purely interlocutory. However reckoning them as intermediatory orders, it would appear, the revision petitions were entertained. The learned Sessions Judge found no merit in the revision petitions and proceeded to dismiss the revision petitions also. As a second revision

is not maintainable obviously, the petitioner has come to this Court with these petitions which bear the label of proceedings under Section 482 Cr.P.C.

4. The learned Magistrate did not grant the prayers primarily for the reason that till then there was not a whisper of a defence based on this cassette, which is sought to be introduced in evidence now. When PW1 was in the witness box, no attempt was made even to suggest the existence of such a cassette containing contradictory statement by him. At the stage of defence evidence also, no attempt was made to introduce such a theory. Now it is alleged that the cassette was always available with the son of the accused.

5. Powers under Section 482 Cr.P.C are to be invoked sparingly and in exceptional cases in aid of justice. I am not certainly persuaded to agree that there is any such vice in the learned Magistrate dismissing the petitions and in the learned Sessions Judge in upholding such dismissals as to justify the invocation of the extraordinary jurisdiction available to this Court under Section 482 Cr.P.C.

6. A party has to be alert in the prosecution of his cause. The soul of a prosecution under Section 138 of the N.I Act will be lost if there is no expeditious disposal. The petitioner who is unable to offer any explanation for his failure to suggest the existence of the cassette earlier and for not confronting the complainant with such alleged

prior statement recorded in the audio cassette by him, cannot now be permitted to invoke the extraordinary jurisdiction which will inevitably further retard the progress of the disposal of the case. No compelling reasons are shown to justify the invocation of such extraordinary powers.

7. These Crl.M.C are, in these circumstances, dismissed. Considering long pendency of the matter before the learned Magistrate, it is directed that the learned Magistrate shall dispose of the case as expeditiously as possible - at any rate, within a period of one month from the date on which a copy of this order is placed before the learned Magistrate.

8. Hand over a copy of this order to the learned counsel for the respondent for production before the learned Magistrate.

H/O

(R.BASANT, JUDGE)

rtr/-